

IN THE SUPREME COURT
OF FLORIDA

CASE NO. 67,591

BLUE CROSS AND BLUE SHIELD OF FLORIDA, INC.,
Petitioners,

v.

RYDER TRUCK RENTAL, INC., a Florida corporation
d/b/a RYDER TRUCK RENTALS, S & M CYPRESS CO.,
INC., a Florida corporation, and STANLEY EARL EIB,

Respondents.

ON PETITION FOR DISCRETIONARY REVIEW TO THE
SUPREME COURT OF FLORIDA

PETITIONER'S JURISDICTIONAL BRIEF

MILTON R. ADKINS, P.A.
2121 Ponce de Leon Blvd.
Suite 650
Coral Gables, Florida 33134

Attorneys for Petitioners

FILED
SID J. WHITE
SEP 11 1985
CLERK, SUPREME COURT
By *pl*
Chief Deputy Clerk

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES	ii-iii
INTRODUCTION	1
STATEMENT OF THE CASE AND FACTS	1-2
ARGUMENT	
I. THE THIRD DISTRICT COURT OF APPEAL'S OPINION EXPRESSLY AND DIRECTLY CONFLICTS WITH THE DECISION OF THIS COURT AND OTHER DISTRICT COURTS OF APPEAL THAT THE RIGHT OF INDEMNITY ACCRUES TO ONE WHO HAS DIS- CHARGED THE DUTY WHICH IS OWED BY HIM BUT WHICH, AS BETWEEN HIMSELF AND ANOTHER, SHOULD HAVE BEEN DISCHARGED BY THE OTHER, SUCH CONFLICT BEING SUFFICIENT TO INVOKE THE JURISDICTION OF THIS COURT.	2-5
II. THE THIRD DISTRICT COURT OF APPEAL'S RULING THAT THE TRIAL COURT PROPERLY DISMISSED WITH PREJUDICE BLUE CROSS' CLAIM PURSUANT TO §627.7372, FLA. STAT. (1983), WAS AN EXPRESS DECLARATION OF THE VALIDITY OF THAT STATUTE, SUFFICIENT TO INVOKE THIS COURT'S JURISDICTION.	5-7
III. THE THIRD DISTRICT COURT OF APPEAL'S DENIAL AND OVERRULING OF BLUE CROSS' ARGUMENT RELATING TO DENIAL OF ITS RIGHT OF ACCESS TO THE COURTS WAS AN EXPRESS CONSTRUCTION OF ART. I., §21, FLA. CONST., SUFFICIENT TO INVOKE THIS COURT'S JURISDICTION.	7-8
CONCLUSION	8-9
CERTIFICATE OF SERVICE	9-10
SUMMARY OF ARGUMENT	10

TABLE OF AUTHORITIES

<u>CASES:</u>	<u>PAGE</u>
<u>Allstate Insurance Co. v. Metropolitan Dade County</u> , 436 So.2d 976 (Fla. 3rd DCA 1983).....	3, 4, 8
<u>Carlos v. Context-Marks Corporation</u> , 346 So.2d 595 (Fla. 3rd DCA 1977).....	6
<u>Houdaille Industries, Inc. v. Edwards</u> , 374 So.2d (Fla. 1979).....	3, 4, 5
<u>Janko v. City of Hialeah</u> , 212 So.2d 800 (Fla. 3rd DCA 1969).....	6
<u>Kluger v. White</u> , 281 So.2d 1 (Fla. 1973).....	8
<u>McBurnette v. Playground Equipment Corp.</u> , 137 So.2d 563 (Fla. 1962).....	3
<u>Mims Crane Service, Inc. v. Insley Manufacturing Corp.</u> , 226 So.2d 836 (Fla. 2nd DCA 1969).....	3, 4, 5
<u>Petterson v. Concrete Construction, Inc. of Lake Worth</u> , 202 So.2d 191 (Fla. 4th DCA 1967).....	6
<u>Rebozo v. Royal Indemnity Co.</u> , 369 So.2d 644, 646 (Fla. 3rd DCA), cert. den. 379 So.2d 209 (Fla. 1979).....	8
<u>Sacks v. Sacks</u> , 267 So.2d 73 (Fla. 1972).....	3
<u>Stuart v. Hertz Corporation</u> , 351 So.2d 703 (Fla. 1977).....	3, 4, 5
 <u>STATUTES:</u>	
§627.7372, Fla. Stat. (1983).....	2, 5, 6, 7
 <u>CONSTITUTIONAL PROVISIONS:</u>	
Art. I, §21, Fla. Const.....	2, 7, 8
 <u>RULES:</u>	
Fla.R.Civ.P. 1.190(a).....	6, 7
Fla.R.App.P. 9.030(a)(2)(A)(i).....	7, 9
Fla.R.App.P. 9.030(a)(2)(A)(ii).....	7, 8, 9
Fla.R.App.P. 9.030(a)(2)(A)(iv).....	5, 9

CASES:

PAGE

OTHER AUTHORITIES:

41 Am.Jur.2d Indemnity, §2.....3

INTRODUCTION

The Petitioner, BLUE CROSS AND BLUE SHIELD OF FLORIDA, INC., was the Appellant in the Third District Court of Appeal and was the Plaintiff in the trial court. The Respondents, RYDER TRUCK RENTAL, INC., S & M CYPRESS CO., INC., and STANLEY EARL EIB, were the Appellees in the Third District Court of Appeal and were the defendants in the trial court. In this Brief of Petitioner on Jurisdiction, the parties will be referred to as they stand before this Court and, alternatively, as "Blue Cross" and "Ryder". The symbol "A" shall stand for Petitioner's Appendix which accompanies this Brief.

STATEMENT OF THE CASE AND FACTS

This is a Petition for Discretionary Review of the decision of the Third District Court of Appeal affirming the dismissal of Blue Cross' Complaint for Indemnification. After one of Blue Cross' policyholders was injured in an automobile accident caused by the negligence of Ryder, and after Ryder settled the negligence action with Blue Cross' policyholder (see Release at A.4-5), Blue Cross sued Ryder for indemnification, seeking a return of payments for health care benefits paid by Blue Cross on behalf of its policyholder pursuant to a contract of group health insurance. (A.1-3). The trial court dismissed Blue Cross' Complaint with prejudice, based upon a finding "that because the insured is barred from recovery under the provisions of the Motor Vehicle No-Fault Law, the insurer is simultaneously barred from any subrogation or indemnification rights by reason

thereof. Ergo, there exists no cause of action for indemnity". (A.6-7). Blue Cross' Motion for Re-hearing was denied by the trial court, and appeal was taken to the Third District Court of Appeal.

The Third District Court affirmed the dismissal with prejudice, but upon grounds other than those stated by the trial court. The Third District Court expressly declared that §627.7372, Fla. Stat. (1983) was valid and that it operated to preclude a health insurer such as Blue Cross from seeking subrogation against the tortfeasor for sums paid out on behalf of an insured by the insurer. The court also opined that, based upon recent decisions of this court and several Florida District Courts of Appeal, Blue Cross was not possessed of a common law right of indemnity against Ryder. Finally, the court expressly construed a provision of the Florida Constitution by holding that a dismissal of Blue Cross' indemnification claim with prejudice did not violate the right of access to the courts as guaranteed by Art. I, §21, Fla. Const. (A.8-12). Timely petition for discretionary review in this court was thereupon filed.

ARGUMENT

- I. THE THIRD DISTRICT COURT OF APPEAL'S OPINION EXPRESSLY AND DIRECTLY CONFLICTS WITH THE DECISION OF THIS COURT AND OTHER DISTRICT COURTS OF APPEAL THAT THE RIGHT OF INDEMNITY ACCRUES TO ONE WHO HAS DISCHARGED THE DUTY WHICH IS OWED BY HIM BUT WHICH, AS BETWEEN HIMSELF AND ANOTHER, SHOULD HAVE BEEN DISCHARGED BY THE OTHER, SUCH CONFLICT BEING SUFFICIENT TO INVOKE THE JURISDICTION OF THIS COURT.

With respect to entitlement to indemnification where one has discharged the duty owed by him, but which between himself

and another, should have been discharged by the other, the Third District Court's opinion applies a general principle of law contained in several prior decisions in a way which completely and erroneously changes the underlying basis for the general principle of law, and then applies that changed principle to a factual setting totally different from those set forth in the cases cited by the Third District Court of Appeal. Such express and direct conflict is more than sufficient to provide this Court with conflict jurisdiction over this matter. Sacks v. Sacks, 267 So.2d 73 (Fla. 1972); McBurnette v. Playground Equipment Corp., 137 So.2d 563 (Fla. 1962).

The Third District Court, in its opinion, clearly relied on four earlier cases: Houdaille and Stuart, supra; Allstate Insurance Co. v. Metropolitan Dade County, 436 So.2d 976 (Fla. 3rd DCA 1983); and Mims Crane Service, supra. These four cases stand for the principle of law that the right to indemnity inures to one who discharges a duty owed by him but which, as between himself and another, should have been discharged by the other, regardless of whether or not an express contract of indemnification between the two existed. Such has long been the rule in equity, as a means of doing complete justice between conflicting interest and claims. In fact, the Court in Mims Crane Service, citing the rule in 41 Am.Jur.2d, Indemnity, §2, recognized "that principles of equity furnish a more satisfactory basis for indemnity." This rule on indemnity goes on to state that:

"A right of indemnity has been said to exist whenever the relation between the parties is such that either in law or in equity there is an obligation on one party to indemnify the other, as where one person is exposed to liability by the wrongful act of another in which he does not join." [Emphasis supplied] Mims Crane Service at 839; see also Stuart, 351 So.2d at 705.

The Third District Court, in affirming the dismissal of Blue Cross' indemnification claim, reasoned that no "special relationship" existed between Blue Cross and Ryder rendering the latter liable to indemnify the former for sums paid out on behalf of the former's injured policyholder. The Third District cited the four previously mentioned decisions interpreting indemnity in holding that "the party seeking indemnity must have been vicariously, constructively, or technically liable for the wrongful acts of the party against whom indemnity was sought". (A.10).

The "vicarious, constructive, and technical liability" referred to by the Third District Court was never defined in the Houdaille; Stuart; Allstate; and Mims Crane Service decisions. However, these decisions did express the rule that equity can form a satisfactory basis for indemnity. Given the aforecited general rule with regard to indemnification, and given that Blue Cross discharged the duty to pay the injured person's medical bills which otherwise would have been paid by Ryder, the "special relationship" required for an indemnity claim should have been found in equity by both the trial court and the Third District Court. The four cases cited above never denied a claim for indemnity in the type of case as here pends before this court, but instead (and in direct conflict with the

decision of the Third District Court of Appeal in this case) appears to approve a claim for indemnity in cases such as this. Clearly the requirement of Blue Cross' paying benefits caused by the negligent acts of Ryder creates a "special relationship" as surely as occurs when one party is liable because another negligently operated a rental car, or where one negligently operated a leased crane. Therefore the Third District Court, in denying the equitable obligation of Ryder to indemnify Blue Cross, has created an express and direct conflict with the decisions previously enunciated by Houdaille, Stuart and Mims Crane Service over which this Court's exercise of its discretion to review the decision pursuant to Fla.R.App.P. 9.030(a)(2) (A)(iv), is warranted. It is clear from the fact situation present in this case that an "equitable obligation" to indemnify within the context of the rule enunciated in Mims Crane Service at 839 and Stuart at 705 has arisen between Blue Cross and Ryder.

II. THE THIRD DISTRICT COURT OF APPEAL'S RULING THAT THE TRIAL COURT PROPERLY DISMISSED WITH PREJUDICE BLUE CROSS' CLAIM PURSUANT TO §627.7372, FLA. STAT. (1983), WAS AN EXPRESS DECLARATION OF THE VALIDITY OF THAT STATUTE, SUFFICIENT TO INVOKE THIS COURT'S JURISDICTION.

The Third District Court expressly declared valid §627.7372 Fla. Stat. (1983) and ruled that it precluded Blue Cross from recovering from Ryder for sums paid out by Blue Cross on behalf of Blue Cross' insured who was injured by the negligence of Ryder. (A.8-12). The trial court had dismissed Blue Cross' claim with prejudice based on its finding that by operation

of the Motor Vehicle No-Fault Law (and specifically by §727.7372 thereof) Blue Cross had no subrogation or indemnification rights. (A.6-7). The fact that the Third District Court affirmed the dismissal with prejudice on grounds other than those advanced by the trial court did not alter the disposition of Blue Cross' claim. With §627.7372 having been expressly declared valid and thus the dismissal with prejudice having been upheld, Blue Cross was erroneously and unlawfully denied its right to assert its claim for reimbursement of sums paid out by Blue Cross as a result of Ryder's negligence.

Although not stressed at the Third District Court, it is axiomatic that leave to amend a complaint should be freely given when justice so requires. Carlos v. Context-Marks Corporation, 346 So.2d 595 (Fla. 3rd DCA 1977); Fla.R.Civ.P. 1.190(a). The courts of Florida have also recognized that with regard to amendment of pleadings:

Doubts should be resolved in favor of allowing amendment unless and until it appears that the privilege to amend has been abused... This is true even though the Trial Judge is of the opinion that the proffered amendment will not result in the statement of a cause of action. Janko v. City of Hialeah, 212 So.2d 800 (Fla. 3rd DCA 1968); Petterson v. Concrete Construction, Inc., of Lake Worth, 202 So.2d 191 (Fla. 4th DCA 1967).

However, the action of the trial court, sustained by the Third District Court in its express declaration of validity regarding §627.7372, destroyed the justice which normally allows liberal amendment, thus denying Blue Cross any ability to attempt to state a further cause of action.

The exercise of this Court's discretionary jurisdiction pursuant to Fla.R.App.P. 9.030(a)(2)(A)(i), is warranted to review the Third District's decision expressly declaring §627.7372 valid and thus precluding Blue Cross from filing an amended Complaint to re-state a cause of action against Ryder.

III. THE THIRD DISTRICT COURT OF APPEAL'S DENIAL AND OVERRULING OF BLUE CROSS' ARGUMENT RELATING TO DENIAL OF ITS RIGHT OF ACCESS TO THE COURTS WAS AN EXPRESS CONSTRUCTION OF ART. I, §21, FLA. CONST., SUFFICIENT TO INVOKE THIS COURT'S JURISDICTION.

Blue Cross also invokes jurisdiction of this Court under Fla.R.App.P 9.030(a)(2)(A)(ii), as the Third District Court's decision expressly construes a provision of the Florida Constitution. In the trial court Blue Cross argued that if §627.7372 operates to bar Blue Cross' subrogation or indemnification rights, then Blue Cross' guarantee of access to the courts for redress of injury pursuant to Art. I, §21, Fla. Const., was unconstitutionally violated. In its opinion, the Third District held that there was no merit to Blue Cross' claim that §627.7372 was unconstitutionally applied in violation of Art. I, §21, Fla. Const.

The basis for the Third District Court's rejection of Blue Cross' argument with regard to unconstitutional denial of access to the courts was that no right of indemnity existed at common law. However, our courts have long held that even if no contractual subrogation or indemnification exists at law, such certainly originates in and are recognized in equity, and "A Court may emphasize either or both of the doctrines 'when necessary to bring about equitable adjustment of a claim

founded on right and natural justice.' Rebozo v. Royal Indemnity Co., 369 So.2d 644, 646 (Fla. 3rd DCA), cert. den. 379 So.2d 209 (Fla. 1979)...," as cited in Allstate, supra. There could never be a more clear example of a claim "founded on right and natural justice" than one for reimbursement of monies required to be paid as a direct result of the negligence of another. Thus the claims of Blue Cross herein are clearly "founded on right and natural justice," as stem from the Florida common law, and should be enforceable as a matter of right in the courts of this state.

But the Third District Court effectively sanctioned the destruction of Blue Cross' claims, and in effect held that no reasonable alternative had to be provided by the legislature to protect the rights and claims abolished, and further held that no overpowering public necessity for abolition of the right had to be shown. Kluger v. White, 281 So.2d 1 (Fla. 1973). Such is clearly erroneous for the reasons stated in Section I of the Argument in this Brief with regard to Blue Cross' claim for indemnification, and it is submitted that the trial court and Third District Court have improperly construed Art. I, §21, Fla. Const., thus unconstitutionally denying Blue Cross' access to the courts of this state. Such express construction of a provision of this State's constitution should cause this court to exercise its discretionary jurisdiction pursuant to Fla.R.App.P. 9.030(a)(2)(A)(ii).

CONCLUSION

It is respectfully submitted that the erroneous order of

the trial court, affirmed by the decision of the Third District Court, must be reversed for the reasons set forth herein, and that jurisdiction in this court exists under Fla.R.App.P. 9.030(a)(2)(A)(i), (ii), and (iv), and that the exercise of this court's discretionary jurisdiction to consider the merits of this case is appropriate and necessary.

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that a true and correct copy of the foregoing was mailed to Andrew Needle, Esquire, Spence, Payne, Masington, Grossman & Needle, P.A., Suite 300, Grove Professional Building, 2950 S.W. 27th Avenue, Miami, Florida 33133 this 9th day of SEPTEMBER, 1985.

MILTON R. ADKINS, P.A.
Attorneys for Petitioners
2121 Ponce de Leon Blvd.
Suite 650
Coral Gables, Florida 33134
305/442-8220

BY: 
H. LAWRENCE HARDY, P.A.

SUMMARY OF ARGUMENT

This Court and the Florida District Courts of Appeal have uniformly recognized that equity furnishes a basis for indemnity where one discharges a duty owed by him but which, as between himself and another, should have been discharged by the other. The Third District Court of Appeal's decision in the case sub judice which upholds the trial court's dismissal of Blue Cross' Complaint seeking equitable indemnification from Ryder, therefore, expressly and directly conflicts with this Court's and the District Courts of Appeal's decisions sufficient to invoke the jurisdiction of this Court.

The Third District Court's application of the Collateral Source Rule precluding Blue Cross' claim for recovery from Ryder was an expressed declaration of the validity of the Statute sufficient to invoke this Court's discretionary jurisdiction.


The Order of the trial court dismissing Blue Cross' Complaint with prejudice, which dismissal was affirmed by the Third District Court, unconstitutionally deprived Blue Cross of its right to access to the courts of this state. This denial of a constitutional right was argued fully before the trial court and Third District Court, with the Third District Court in its opinion, expressly construing a provision of the Florida Constitution in holding that Blue Cross had no right to indemnification from Ryder, with such construction sufficient to invoke the discretionary jurisdiction of this court.

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that a true and correct copy of the Summary of Argument and Table of Contents was mailed to Andrew Needle, Esquire, 2950 S.W. 27th Avenue, Suite 300, Miami, Florida 33133 this 16th day of September, 1985.

MILTON R. ADKINS, P.A.

BY:


W. LAWRENCE HARDY P A